Division of Securities
Utah Department of Commerce
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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF: **THE THORNWATER COMPANY, L.P., CRD #36195** **Respondent.**	**STIPULATION AND CONSENT ORDER AS TO THE THORNWATER COMPANY** Docket No. SD-02-0144

The Utah Division of Securities (Division), by and through its Director of Licensing, George Robison, and The Thornwater Company, L. P. (Thornwater), CRD #36195, hereby stipulate and agree as follows:

1. The Division commenced agency action against Grabowski and two other agents of The Thornwater Company, L. P. (Thornwater), namely, James Hopkins (Hopkins) and Adam Harrington Rucksdeschel (Rucksdeschel), by petitioning for an order revoking and barring their licenses, and imposing a fine, on September 23, 2002. The Division also issued an Order to Show Cause against Thornwater and another Thornwater agent, Thomas Russo (Russo), at that time. The

actions against Rucksdeschel, Hopkins and Russo were later resolved by Consent Orders, and the actions against Thornwater and Grabowski are pending, with an expected hearing date in August 2006.

2. Thornwater and the Division have agreed to resolve the action against Thornwater through this Stipulation and Consent Order (Order).

3. Thornwater admits the jurisdiction of the Division over it and over the subject matter of this action.

4. Thornwater waives any right to a hearing to challenge the Division's evidence and present evidence on its behalf. Thornwater also waives any right to appeal this Order.

5. Thornwater has read this Order, understands its contents, and enters into this Order voluntarily. No promises or threats have been made by the Division, nor by any representative of the Division, to induce Thornwater to enter into this Order other than as described herein.

6. Thornwater is represented by attorneys Steve Altman and Eric Rosenberg of the law firm of Altman & Company, P. C. and is satisfied with the legal representation received.

I. FINDINGS OF FACT

The Division makes the following findings of fact:

The Broker-Dealer, The Client, The Agents

7. The Thornwater Company, L.P. (Thornwater) is a broker-dealer that was licensed by the Division from November 20, 1995 until December 10, 2001, when its license was suspended by emergency order for failure to comply with an audit by the Division. The emergency order of suspension became permanent on January 14, 2002. The Division commenced a subsequent action against Thornwater on September 23, 2002, when it issued an order to show cause. The order to show cause was amended on April 8, 2005.

8. J. Garland (Garland) is a Utah resident and was a client of Thornwater from January 1999 to December 10, 2001, when Thornwater terminated its relationship with all Utah clients. Garland became a client of Thornwater when Russo transferred Garland's account to Thornwater from another firm.

9. Thomas Russo (Russo) was employed by Thornwater as a broker-dealer agent and was the account executive of Garland's account at Thornwater from January 1999 to June 1999. By stipulation, Russo was barred from associating with a licensed broker-dealer or investment adviser in Utah.

10. James Hopkins (Hopkins) was employed by Thornwater as a broker-dealer agent and managed Garland's account from March 1999 to April 2000. By stipulation, Hopkins agreed to never license as a securities agent in the State of Utah again.

11. Adam Harrington Rucksdeschel (Rucksdeschel) was employed with Thornwater as a broker-dealer agent from November 1999 to August 2002. In association

with two previous broker-dealers, Rucksdeschel was licensed in Utah from October 1994 through April 1999, but was not associated with Thornwater until November 1999. Rucksdeschel was licensed in Utah from May 2000 until March 2002. By stipulation, Rucksdeschel's license was suspended for two years.

12. Robert John Grabowski (Grabowski) was president and CEO of Thornwater. Grabowski was licensed in Utah from January 1999 until March 2002.

Unauthorized Margin Trades: Russo and Rucksdeschel

13. Between January 1999 and March 1999, Russo made six margin trades in Garland's account without Garland's authorization regarding the margin.

14. Rucksdeschel began acting as Garland's account manager in January 2000, when Rucksdeschel telephoned Garland to offer his services as a broker-dealer agent. Hopkins, the agent of record at that time, was no longer actively managing the account. Rucksdeschel claimed he was a knowledgeable broker and assured Garland he was experienced in the technology sector. Rucksdeschel claimed to have worked for the SEC. Rucksdeschel also claimed to have non-public information on the stocks he was attempting to sell to or had sold to Garland. Rucksdeschel convinced Garland to let Rucksdeschel to manage the account.

15. Between January 2000 and April 12, 2000, Rucksdeschel made ten margin trades in Garland's account without Garland's authorization. Although

Rucksdeschel made the trades and acted as account manager, Hopkins' name still appeared on Garland's account as the agent of record.

16. On February 18, 2000, Garland received a notice to send nearly $30,000 or the equivalent value in securities to cover a margin call. When Garland telephoned to complain about the margin call, Rucksdeschel told him to ignore the request and that the notice of a margin call was in error.

17. In fact, as stated above, between January 2000 and April 12, 2000, Rucksdeschel had made ten margin trades in Garland's account prior to Garland signing a margin agreement.

18. In April 2000, a sales assistant for Thornwater telephoned Garland and told him his account would be sold to cover margin calls if Garland did not sign a margin agreement on his account. Garland tried, without success, to contact Rucksdeschel and discuss the threatened sale. Garland, therefore, signed a margin application on April 12, 2000 and faxed it to Thornwater.

<u>Ignoring Instructions: Rucksdeschel</u>

19. After signing the margin agreement, Garland instructed Rucksdeschel to take the account out of margin and not to make any more margin trades.

20. Rucksdeschel ignored Garland's instructions, did not take Garland out of margin and Garland received another sixteen notifications of margin calls after April 12, 2000.

Unlicensed Activity: Hopkins and Rucksdeschel

21. In approximately March, 1999, Hopkins called Garland and introduced himself as the President of Thornwater and informed Garland that Russo no longer worked for Thornwater. In fact, Hopkins' Form U-4 and the records of the Central Registration Depository (CRD) do not reflect that Hopkins was ever the president of Thornwater. In addition, Russo was also still employed as a Thornwater agent at that time. Hopkins convinced Garland to let him manage the account.

22. Hopkins thereafter made several purchases for Garland before the account became dormant. Hopkins did not, however, become licensed in Utah until June 1999.

23. Although Rucksdeschel began trading in Garland's account in January 2000, he did not become licensed in Utah until May 2000.

24. In recorded conversations with Garland, Rucksdeschel admitted purchasing and/or selling stocks in Westell, C-Net, Communications Intelligence, Cell Therapeutics and Data Broadcasting in Garland's account before he was licensed in Utah.

Unauthorized Trades: Rucksdeschel

25. Garland did not give Thornwater discretionary authority on the account.

26. Rucksdeschel made unauthorized purchases in Garland's account, including but not limited to:

a. 4,000 shares of Data Tech;

b. 3,000 shares of Communication Intelligence; and

c. 2,000 shares of Westell.

27. In addition, Rucksdeschel sold stock from Garland's account without Garland's knowledge in order to purchase other stocks.

Unsuitable Trades: Rucksdeschel

28. Garland did not want to invest in stocks for which Thornwater acted as a market maker and expressed his concerns to Rucksdeschel about these types of securities. However, Rucksdeschel invested in stocks for which Thornwater made a market and in low-priced speculative stocks that were unsuitable for Garland.

Excessive Trades: Rucksdeschel

29. From January 2000 through July 2000, Garland deposited a total of $125,604.55 in cash and $32,693.50 in securities. From January 2000 to February 2001, Rucksdeschel made purchases in Garland's account in the amount of $433,047.33, from which Thornwater and Rucksdeschel shared in $26,036.88 in commissions and Garland was charged $2,459.43 in margin interest.

30. The account had an annualized turnover ratio of 11.03, meaning the entire portfolio was turned over an average of 11.03 times in a year. The cost to equity

ratio[1] of the account was 72.57 percent. The account lost a total of $147,140.49 or 92.95 percent.

31. In February 2004, Thornwater paid $130,000 in restitution to Garland after he initiated an arbitration action through the NASD.

Material Misrepresentations: Hopkins and Rucksdeschel

32. Thornwater agents made material misrepresentations of the following facts:

    1. The initial and continued use of margin in Garland's account.

    2. In March 1999, Hopkins introduced himself to Garland as the President of Thornwater and told him Russo no longer worked for Thornwater. In fact, Hopkins was not the president of Thornwater and Russo was still working for Thornwater. In reliance on this misrepresentation, Garland let Hopkins manage Garland's account.

    3. Rucksdeschel said he had worked for the emerging markets division of the Securities and Exchange Commission (SEC) helping developing countries set up securities markets. In fact, Rucksdeschel had only

[1]The cost to equity ratio is a determination of the percentage of return on the customer=s average net equity in order to pay broker-related commissions and costs. These costs include commissions, fees, mark-ups, mark-downs, selling concessions and margin interest. In other words, any compensation that drives the trade.

served a three-month internship with the SEC in 1992 in that division.

4. Rucksdeschel said he had non-public information about stocks he was attempting to sell to and/or had sold to Garland.

Omission of Material Fact: Hopkins and Rucksdeschel

33. Thornwater agents omitted to state the following material facts:

 1. Hopkins was not licensed when he made trades in Garland's account before June 1999.

 2. Rucksdeschel was not licensed when he made trades in Garland's account before May 2000.

High Pressure Sales Tactics: Rucksdeschel

34. Rucksdeschel was pushy, used high pressure sales practices and profanity.

The Division's Investigation

35. On March 8, 2001, Garland sent a complaint letter to Thornwater, complaining of unauthorized margin trades, coercion to sign a margin agreement under threat of forced liquidation, unauthorized trades, unsuitable recommendations, unsuitable trades in "market-maker" stocks and high-pressure sales tactics. In August 2001, Garland sent a copy of the complaint letter to the Division. After receiving Garland's complaint, the Division initiated an audit of Thornwater on December 10, 2001.

36. Thornwater refused to let the Division conduct the audit and the Division issued

an Emergency Order suspending Thornwater's license on December 10, 2001. Thornwater did not oppose the Emergency Order and the Order became permanent on January 25, 2002.

II. CONCLUSIONS OF LAW

Violations of Securities Laws and Regulations by Thornwater

Fraud

37. Thornwater, through its agents, made untrue statements of material fact and omitted to state material facts necessary in order to make statements made, in the light of the circumstances in which they were made, not misleading, in violation of Utah Code Ann. § 61-1-1(2).

38. Thornwater, through its agents, engaged in acts, practices, and/or a course of business which operated as a fraud or deceit, in violation of Utah Code Ann. § 61-1-1(3).

Unlicensed Broker-Dealer Agents

39. Thornwater agents conducted business while unlicensed, in violation of Utah Code Ann. § 61-1-3.

Dishonest or Unethical Business Practices

40. Thornwater, through its agents, engaged in dishonest or unethical business practices in the securities business in violation of Utah Code Ann. § 61-1-6(2)(g), including, but not limited to:

1. executing trades on margin without a written margin agreement in effect, as proscribed by Utah Admin. Code R164-6-1g(C)(6);
2. unauthorized transactions, as proscribed by Utah Admin. Code R164-6-1g(C)(4);
3. unsuitable recommendations, as proscribed by Utah Admin. Code R164-6-1g(C)(3);
4. exercising discretionary power without prior written authorization, as proscribed by Utah Admin. Code R164-6-1g(C)(5);
5. excessive trading, as proscribed by Utah Admin. Code R164-6-1g(C)(2); and
6. effecting transactions by deceptive or fraudulent device as proscribed by Utah Admin. Code R164-6-1g(C)(15).

<u>Violations of Securities Laws and Regulations by Thornwater</u>

<u>Failure to Supervise</u>

41. The misrepresentations, unlicensed activity, unauthorized trades, unauthorized use of margin, unsuitable trades, excessive trades and high pressure sales tactics constitute violations of Utah's securities laws and regulations.

42. The above violations were committed by Russo, Hopkins and Rucksdeschel, who were subject to the supervision of Thornwater.

43. Thornwater failed to implement and/or enforce policies and procedures

reasonably designed to detect and prevent violations of securities laws by Thornwater agents.

44. Thornwater failed to reasonably supervise its agents.

Refusal to Allow Audit

45. Thornwater violated Section 61-1-5(5)(a) of the Act by refusing to let the Division conduct an audit.

III. AGREEMENT

46. Thornwater neither admits nor denies the Division's investigative findings and conclusions, but consents to the Division entering an Order, requiring Thornwater to pay a fine of $100,000 by certified check within ninety (90) days of the entry of this Order.

47. Thornwater represents that though it has ceased doing securities business, it is able to pay the fines imposed as set forth in this Order.

48. If the Division finds that Thornwater materially violates any term of this Order, after notice and opportunity to be heard before an administrative hearing officer, Grabowski (as the firm's president and CEO of Thornwater) shall be barred from associating with a broker-dealer or investment adviser licensed in Utah.

IV. FINAL RESOLUTION

49. Thornwater acknowledges that this Consent Order, upon approval by the Division Director (Director) and subject to the approval of the Utah Securities

Advisory Board, shall be the final compromise and settlement of this matter. Thornwater further acknowledges that if the Director and the Advisory Board do not accept the terms of the Order, it shall be deemed null and void and without any force or effect whatsoever.

50. Thornwater acknowledges that the Order does not affect any civil or arbitration causes of action that third parties may have against it arising in whole or in part from its actions, and that the Order does not affect any criminal causes of action that a prosecutor might bring.

51. This Order constitutes the entire agreement between the parties herein, and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements that modify, interpret, construe, or otherwise affect this Order in any way.

Utah Division of Securities	The Thornwater Company, L. P.
Date: 8/8/06	Date: 8/4/06
By: [signature]	By: [signature]
George Robison	Robert John Grabowski
Director of Licensing	President and CEO
Approved:	Approved:

Jeffrey Buckner
Assistant Attorney General

Steve Altman
Eric Rosenberg
Altman & Company, P. C.
Attorneys for The Thornwater Company, L.P.

ORDER

It is hereby ordered that:

52. The Division has made a sufficient showing of Findings of Fact and Conclusions of Law to form a basis for this settlement.

53. Thornwater pay a fine of $100,000 by certified check to the Division within ninety (90) days of the entry of this Order.

54. If the Division finds that Thornwater materially violates any term of this Order, after notice and opportunity to be heard before an administrative hearing officer, Grabowski (as the firm's president and CEO of Thornwater) shall have his license revoked and he will be barred from associating with a broker-dealer or investment adviser licensed in Utah.

DATED this 15th day of August, 2006.

Wayne Klein

WAYNE KLEIN
Director, Utah Division of Securities

DEPARTMENT OF COMMERCE
THE GREAT SEAL OF THE STATE OF UTAH
1896
DIVISION OF SECURITIES

BY THE UTAH SECURITIES ADVISORY BOARD:

The foregoing Order is hereby accepted, confirmed and approved by the Utah Securities Advisory Board.

DATED this 16 day of August, 2006.

Tim Bangerter

Edward L. McCartney

Laura Polacheck

Mark Pugsley

Craig Skidmore

CERTIFICATE OF SERVICE

I certify that on the 18TH day of AUGUST 2006, I mailed a true and correct copy of the Stipulation and Consent Order to:

Steven Altman
Eric Rosenberg
ALTMAN & COMPANY, P.C.
260 Madison Avenue 22nd Floor
New York, NY 10016

Attorneys for Robert John Grabowski
and The Thornwater Company, L.P.

Pamala Radzinski

Executive Secretary